

SUB P7
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sequence selected from the group consisting of SEQ ID NO: 1 through SEQ ID NO: 304701 or a complement thereof.

REMARKS

Following the entry of this amendment, claims 1-15 will be pending in the instant application. Claims 1 and 4 have been amended. Support for the amendments may be found throughout the specification, for example at page 13, lines 5-7, page 82, lines 10-11 lines, in the original claims, and in the sequence listing. No new matter is introduced by these amendments.

In the Office Action mailed September 19, 2001, the Examiner required restriction to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-7, drawn to an isolated nucleic acid hybridizable to a nucleic acid of SEQ ID Nos 1-304,950, their fragments and complements, classified in class 536, subclass 23.1. 1.
- II. Claims 8-10 drawn to a purified nucleic acid comprising end sequences identified in Table A, classified in Class 536, subclass 23.1.
- III. Claim 11 drawn to a purified polypeptide, classified in class 530, subclass 300.
- IV. Claims 12-15 drawn to a transformed plant, classified in class 800, subclass 205.

Applicants respectfully traverse the restriction requirement and provisionally elect the claims of group I, claims 1-7, drawn to polynucleotides for examination on the merits. Further, Applicants elect the sequence of SEQ ID NO.: 2 pursuant to the Sequence Election Requirement Applicable to all Groups, set forth at page 4 of the Office Action mailed September 19, 2001.

Applicants submit that the Patent Office has not proven that an undue burden would be imposed by the search and examination of the entire application. Applicants submit that the

complete examination would be handled most expeditiously by treating all of the pending claims as a single entity. As MPEP 803 directs, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

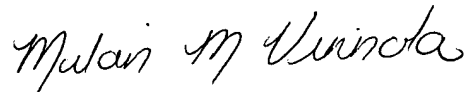
No serious burden is created for the Examiner by running a simultaneous computerized search of the nucleic acids of Groups I and II, both of which are classified in the same class and subclass. The single search may be run in conjunction with databases such as those available at <http://www.ncbi.nlm.nih>. Moreover, a single search for a particular nucleotide sequence and its translation product, for example, would automatically yield results from Groups I-IV without any undue burden on the Examiner.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore must be withdrawn. However, in order to facilitate prosecution, Applicants have provisionally elected, with traverse, Group I (claims 1-7), and the sequence of SEQ ID NO.: 2 for prosecution on the merits.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in the documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account Number 50-1824, referencing docket number 16517.128.

Applicants likewise authorize a charge to Deposit Account Number 50-1824 for any other fees related to the present application that are not otherwise provided for in the accompanying documents.

Respectfully submitted,



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Marked Up Claims

1. (Once Amended) A substantially purified nucleic acid molecule comprising a fragment from about 30 to about 300 nucleotides residues, wherein said fragment exhibits complete complementarity [, said nucleic acid molecule capable of specifically hybridizing] to a second nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 1 through SEQ ID NO: [304905] 304701 or a complement [or fragment] thereof.

4. (Once Amended) The substantially purified nucleic acid molecule according to claim 1, wherein said nucleic acid molecule comprises a nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 1 through SEQ ID NO: [304905] 304701 or a complement thereof.